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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,002	01/16/2004	Edward J. Schmitt	00552-P0052A	7909

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EXAMINER

JOHNSON, STEPHEN

ART UNIT PAPER NUMBER

3641

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/759,002

Applicant(s)

SCHMITT, EDWARD J.

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-8 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-8 and 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1,5-8 and 13-17 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Claims 1, 5-8, and 13-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 7-8 and 9, what direction is intended by the phrase “a distal end direction”? Although, the term “distal end” is well understood the term “distal end direction” is not. In claim 1, lines 7-10, it is not understood as to how the inner diameter of the funnel portion can decrease in diameter toward the distal end; the spout portion increase in diameter toward the distal end and have a constricted neck between the funnel portion and the spout portion. In claim 1, lines 13-14, it is not understood as to how the funnel portion and spout portion can be accurately described as extending generally transversely from the side of the container.

Transverse indicates an angle of 90 degrees relative to another axis or plane rather than from a side.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 5-8, and 13-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant has no embodiment in the application as originally filed that has a funnel portion “having a generally frusto-conical shape with an inner diameter gradually **decreasing** in

a distal end direction” (see claim 1). Rather, the inner diameter of the frusto-conical funnel portion **increases** in diameter as it extends toward the distal end (see fig. 4).

4. Claims 1, 5-8, and 13-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant has no embodiment in the application as originally filed that has a funnel portion “having a generally frusto-conical shape with an inner diameter gradually **decreasing** in a distal end direction” (see claim 1). Rather, the inner diameter of the frusto-conical funnel portion **increases** in diameter as it extends toward the distal end (see fig. 4).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 5, 7, 13, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minneman (466) in view of either Knight et al. (095) or Pape (531).

Minneman (466) discloses a funnel/container arrangement comprising:

- | | |
|--|-----------------------|
| a) a container with bottom and side portions; | 10, 11 |
| b) a funnel member; | see figs. 4-6 |
| c) a funnel portion of frusto-conical shape; | 21; see fig. 5 |
| d) a spout portion of cylindrical shape; | 16; see figs. 4, 5 |
| e) an increasing diameter of the funnel portion; | see figs. 4, 5, and 7 |

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- f) an increasing diameter of the spout portion; see figs. 4, 5, and 7
- g) a neck portion; 18, 19
- h) the spout portion received within an outer tip portion see fig. 7
of a cartridge case; and
- i) a plastic material. see fig. 7 and material assoc.
with cross-section in fig. 7

Minneman (466) applies as recited above. However, undisclosed is a spout portion whose outer surface is frusto-conical in shape. Knight et al. (see item 9 in fig. 1) and Pape (see item 12 in fig. 1) each teach a spout portion whose outer surface is frusto-conical in shape. Applicant is substituting one spout portion shape for another in an analogous art setting; the substituted shape being demonstrated by a plurality of references in this art. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of either Knight et al. or Pape to the Minneman funnel/container arrangement and have a funnel-container arrangement whose spout portion is of a particular shape.

7. Applicant's arguments are addressed as follows. It is argued that in the Minneman reference, the funnel portion gradually decreases in inner diameter toward the neck portion and that the spout portion gradually increases in inner diameter away from the neck portion. This is accurate. Further, it is not understood as to how one can have a **neck portion** without such an arrangement.

It is further argued that the funnel member is not shaped to fit with an outer tip portion of a cartridge case to be so received. In response, please note fig. 7 of Minneman that clearly shows a cartridge case with associated tip portion received in the spout portion 16 of Minneman.

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It is further argued that the funnel and spout portions do not extend generally transversely from the side portion of the container. In response, if funnel tube 11 is considered to be the side of the container, the funnel and spout portions do extend transversely from the side portion of the container. The claim limitation directed to extending transversely is indefinite because the direction has not been defined relative to some axis or plane at a 90 degree angle as is required of this terminology.

With regard to the issue of flowing out of the funnel, clearly the Minneman device is specifically designed to both flowably receive as well as flowably pour powder when the funnel is elevated to some angle (see col. 1, lines 5-23).

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Minneman (466) in view of either Knight et al. (095) or Pape (531) as applied to claims 1, 5, 7, 13, and 15-17 above, and further in view of Discho (143) or Reynolds (889).

Minneman, Knight et al., and Pape apply as previously recited. However, undisclosed is a funnel container made of metal. Discho (page 1, lines 43-47) and Reynolds (page 1, lines 39-52) each teach a funnel container made of sheet metal. Applicant is substituting one material type of funnel container for another in an analogous art setting as explicitly encouraged by the primary reference. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Discho or Reynolds to the Minneman, Knight et al., and Pape container funnel and have a container funnel made of a different material type.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Minneman (466) in view of either Knight et al. (095) or Pape (531) as applied to claims 1, 5, 7, 13, and 15-17 above, and further in view of Hellebush (655).

Minneman, Knight et al., and Pape apply as previously recited. However, undisclosed are handles located on opposite sides of the pourable container. Hellebusch teaches handles located on opposite sides of the pourable container 20. Applicant is selecting a means to aid in pouring a pourable container and putting it to use as is already taught by Hellebush (col. 2, lines 22-26). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Hellebusch to the Minneman, Knight et al., and Pape pourable container and have a pourable container with handles to aid in pouring.

10. Applicant's arguments with respect to claims 1, 5-8, and 13-17 have been considered but are moot in view of the new ground(s) of rejection.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877

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and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
June 12, 2006